

UNIFORMED SERVICES EMPLOYMENT & REEMPLOYMENT RIGHTS ACT OF 1994 AND TRF'S MILITARY SERVICE CREDIT

Given the recent events in the Persian Gulf and elsewhere, many TRF members who serve in the National Guard or Reserve have been called or will be called to active duty. The Fund is offering this primer as a resource to the member's employing units. This primer is offered as a guide only, and employers should consult their respective legal counsel for advice with respect to this issue.

The federal Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA") generally requires employers to reemploy and preserve certain job benefits for "qualified" employees who engage in military service. The law, codified at 38 U.S.C. § 4301, also prevents an employer from discriminating against employees because of their service and obligations relating to the United States' uniformed services. USERRA establishes the time frames and requirements for reemployment rights and benefit preservation rights, and it also defines who is a "qualified" employee for purposes of these rights.

TRF Service Credit:

A member who leaves TRF-covered employment to enter military service and who is then reemployed pursuant to USERRA must be treated as not having incurred a break in service with his or her TRF employer as a result of the military service. The member is entitled to TRF service for the time that he was on leave in military service.

TRF will grant the required service credit to such a member under IC 21-6.1-4-6.1.

Annuity Savings Account (ASA) Contributions:

Compensation Used in Calculating Contributions

For purposes of computing Annuity Savings Account (ASA) contributions, USERRA states that an employee's compensation during the period of military service shall be computed: (1) at the rate the employee would have received except for the period of military service; or (2) in the case that the determination of such rate is not reasonably certain, on the basis of the employee's average rate of compensation during the 12-month period immediately preceding the period of the service.

In most cases, a TRF employer should be able to compute compensation based on the rate the employee would have received but for the period of military service.

Member-Paid Post-Tax Contributions

In the case of a member who makes post-tax contributions to his or her ASA, when the member returns from military service, the member is entitled under USERRA to make-up the missed

contributions if he or she desires. These contributions would be withheld from the member's salary by the employer and then paid and reported by the employer to TRF as post-tax contributions.

Employer-Paid Contributions under a Pre-Tax "Pick-Up" Arrangement

USERRA rights also apply to a member for whom the employer was making a pre-tax payment (or "pick-up") of the ASA contributions before the member entered military service. In this case, when the member returns from military service pursuant to USERRA, the member is entitled to have the employer report and pay to TRF on a pre-tax basis the contributions that would have been paid by the employer for that member if the member had not entered military service.

Salary Reduction Contributions under a Pre-Tax "Pick-Up" Arrangement

If before the member entered military service, the member's employer was paying the member's ASA contribution on a pre-tax pick-up basis under a salary reduction agreement, USERRA requires the member to be put in the position that he or she would have been in if he or she had not entered military service. Upon the member's return from military service, the member is entitled to have his or her salary reduced by an amount equal to the "missed" contributions. The employer would then report and pay to TRF the "made-up" contributions on a pre-tax basis.

Notice to TRF

The employer will have to notify TRF when any reported ASA contributions are being made for periods of military service by the member or by the employer, and whether these contributions are post-tax or pre-tax contributions. The employer will also have to notify TRF of any USERRA-covered military service when a member returns from military service, so that TRF can correctly credit the service to the member.

APPLICABLE INDIANA STATUTE

IC 21-6.1-4-6.1

Military service credit; teachers; college teacher training; employees at state institutions of higher learning

(b) This subsection applies to members who retire after June 30, 1980. A member who had completed four (4) years of approved college teacher training before voluntary or involuntary induction into military service is entitled to credit for the member's active military service as if the member had begun teaching before the induction. A member who serves in military service is considered a teacher and is entitled to the benefits of the fund if:

- (1) the member has an honorable discharge; and
- (2) except as provided in subsection (f), the member returns to active teaching service within eighteen (18) months after the completion of active military service.

The time served by a member in military service for the duration of the hostilities or for the length of active service in the hostilities and the necessary demobilization time after the hostilities is not subject to the one-seventh rule specified in section 5 of this chapter. However, not more than six (6) years of military service credit may be granted under this subsection. In order to be eligible for any military service credit under this subsection, a member must have at least ten (10) years of in-state service credit.

(c) This subsection applies to members who retire after May 1, 1989. A member who had begun but had not completed four (4) years of approved college teacher training before voluntary or involuntary induction into the military services is entitled to service credit in an amount equal to the duration of the member's active military service if the following conditions are met:

- (1) The member has an honorable discharge.
- (2) Except as provided in subsection (f), the member returns to a four (4) year approved college teacher training program within eighteen (18) months after the completion of active military service and subsequently completes that program.
- (3) The member has at least ten (10) years of in-state service credit.

(d) This subsection applies to members who retire after May 1, 1991, and who are employed at state institutions of higher education. A member who had begun but had not completed baccalaureate or post-baccalaureate training before voluntary or involuntary induction into military service is entitled to the member's active military service credit for the member's active military service in an amount equal to the duration of the member's military service if the following conditions are met:

- (1) The member received an honorable discharge.
- (2) Except as provided in subsection (f), the member returns to baccalaureate or post-baccalaureate training within eighteen (18) months after completion of active military service and subsequently completes that training.
- (3) The member has at least ten (10) years of in-state service credit.

(e) The maximum amount of service credit that may be granted to a member who meets the conditions of subsection (c), or (d) is six (6) years. However, for purposes of subsection (c), or (d), the time served by the member in active military service for the length of active service in hostilities and necessary demobilization is not subject to the one-seventh rule specified in section 5 of this chapter.

(f) The board shall extend the eighteen (18) month deadline contained in subsection (b)(2), (c)(2), or (d)(2) if the board determines

that an illness, an injury, or a disability related to the member's military service prevented the member from returning to active teaching service or to a teacher training program within eighteen (18) months after the member's discharge from military service. However, the board may not extend the deadline beyond thirty (30) months after the member's discharge.

(g) If a member retires, and the board subsequently determines that the member is entitled to additional service credit due to the extension of a deadline under subsection (f), the board shall recompute the member's benefit. However, the additional service credit may be used only in the computation of benefits to be paid after the date of the board's determination, and the member is not entitled to a recomputation of benefits received before the date of the board's determination.

(h) Notwithstanding any provision of this section, a member is entitled to military service credit and benefits in the amount and to the extent required by the Uniformed Services Employment and Reemployment Rights Act (38 U.S.C. 4301 et seq.), including all later amendments.

(i) Subject to the provisions of this section, an active member may purchase not more than two (2) years of service credit for the member's service on active duty in the armed services if the member meets the following conditions:

(1) The member has at least one (1) year of credited service in the fund.

(2) The member serves on active duty in the armed services of the United States for at least six (6) months.

(3) The member receives an honorable discharge from the armed services.

(4) Before the member retires, the member makes contributions to the fund as follows:

(A) Contributions that are equal to the product of the following:

(i) The member's salary at the time the member actually makes a contribution for the service credit.

(ii) A rate, determined by the actuary of the fund, that is based on the age of the member at the time the member actually makes a contribution for service credit and computed to result in a contribution amount that approximates the actuarial present value of the benefit attributable to the service credit purchased.

(iii) The number of years of service credit the member intends to purchase.

(B) Contributions for any accrued interest, at a rate determined

by the actuary of the fund, for the period from the member's initial membership in the fund to the date payment is made by the member.

However, a member is entitled to purchase service credit under this subsection only to the extent that service credit is not granted for that time under another provision of this section. At least ten (10) years of service in Indiana is required before a member may receive a benefit based on service credits purchased under this section. A member who terminates employment before satisfying the eligibility requirements necessary to receive a monthly allowance or receives a monthly allowance for the same service from another tax supported public employee retirement plan other than under the federal Social Security Act may withdraw the purchase amount plus accumulated interest after submitting a properly completed application for a refund to the fund.

(j) The following apply to the purchase of service credit under subsection (i):

(1) The board may allow a member to make periodic payments of the contributions required for the purchase of the service credit. The board shall determine the length of the period during which the payments must be made.

(2) The board may deny an application for the purchase of service credit if the purchase would exceed the limitations under Section 415 of the Internal Revenue Code.

(3) A member may not claim the service credit for purposes of determining eligibility or computing benefits unless the member has made all payments required for the purchase of the service credit.

As added by P.L.1-1991, SEC.146. Amended by P.L.43-1991, SEC.8; P.L.213-1995, SEC.2; P.L.5-1997, SEC.10; P.L.184-2001, SEC.9.

